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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-27-1983

Reported in : (1983)(14)ELT2376TriDel

Appellant : instrumentation Ltd.

Respondent : Collector of Customs

Judgement :

1. The Revision Application dated 11-11-1980 against Order-in-Appeal No. S/49-510/80 Air dated 30-6-1980, passed by the Appellate Collector of Customs, Bombay, has been transferred by the Government of India to the Tribunal for disposal in terms of the provisions of Sec. 131 B(2) of the Customs Act, 1962.

2. A consignment of Ceramic Resistance Element Type W60/1, RO 100 Ohms DIN STD was imported and assessed to duty under Heading 85.18/27 (1) vide B/E No. 900D dated 15-12-1978. The Assistant Collector of Customs rejected the claim for re-assessment under Heading 90.29 (1)/90.23 (1) as parts of Thermometer as untenable since resistors (resistances) fixed or variable are specified under heading 85.19 as per BTN Explanatory Notes Section XVI page 1448. The Appellate Collector stated that the catalogue produced by the Appellants shows that the elements have a nominal resistance in terms of Ohms at a certain temperature and this varies with change in temperature, they are in the form of a resistance wire enclosed by ceramic. Under BTN Explanatory Notes page 1644, resistances are excluded from the scope of heading 90.29 even if specially designed for instruments when imported separately. Similarly, page 1448

of the Explanatory Notes lays down that all types of resistors except heating resistances are included in heading 85.19. The goods are nothing but electrical resistors and by calling them ceramic resistances element i.e. by trying to change the nomenclature, the fact that they are electrical resistances, cannot be changed. He, therefore, rejected the appeal for re-assessment under heading 90.29 (1) read with 90.23 (1).

3. In the present appeal it is contended that these goods are solely designed for use in the manufacture of thermometers. They are not ordinary resistors but are sensing elements which sense the temperature in process control system. Classification 85.18/27 (1) is not appropriate because this applies to Electrical Capacitors, Electrical Circuit, Resistors other than Heating Resistors etc. A detailed Technical Explanation to substantiate the claim for reassessment under heading 90.23(1) read with 90.28(4)/90.29(1) was furnished and attention was drawn to BTN page 1636 which reads : "Resistance Thermometers and pyrometers operating by changes in the electrical resistance of a metal (e.g. platinum)" and it was pointed out that the catalogue will show that these resistances have been fabricated from platinum.

4. Shri Gujar reiterated the arguments. "The Thermometers in which these elements are used are meant for the pipeline where the temperature is to be measured with the greatest accuracy. These are not ordinary Resistances used in electric circuits for voltage drop or limitation of the current, the prices of which may range from a few paise to Rs. 1/- or Rs. 2/-, whereas imported elements' cost is about Rs. 170/- including the duty. He also filed a copy of Order-in-Appeal dated 18-11-1980 passed by the later Shri M. G. Vaidya, holding that ceramics resistances element imported from West Germany are parts of the Thermometers which the appellants manufacture and are assessable under heading 90.23(1).

5. For the Department, Shri Chatterjee stressed that, according to the Explanatory Notes at page 1644 and page 1648 of the Explanatory Notes, resistances are excluded from the scope of headings 90.29 and 85.19. He did not agree with Shri Vaidya's order. He cited ECR 1981 154-D, where it was held that though tungsten filaments are part of electric filament lamps, mentioned in heading 85.18/27(4),

they are classifiable under heading 81.0104 since there is a specific entry for articles made of tungsten. On this analogy the order of the Appellate Collector that the goods are assessable under heading 85.19 is correct and the appeal deserves to be rejected.

6. As observed by Shri Vaidya, platinum resistance thermometers operating by change in electrical resistance in the metal, fall under Heading 90.23. The evidence adduced shows that these elements are designed for such themometers for accurate measurement of temperatures as part of process control instruments for boilers and pipelines. We also take note of Shri Vaidya's logic that every conductor is not a resistor and that resistance is not the main function of these elements. In fact, the appellants have stressed that these are the sensing element of the thermometers and not a resistance element. In the face of the explanation on page 1645 of the Notes to the CCCN that sensitive elements for various instruments, even when incorporating resistors, are classifiable under Heading 90.29, it would be difficult to rule out this classification in the present case. We are, therefore, unable to agree with the contentions of the Department. Since these elements are parts for use solely or principally with thermometers falling under Heading 90.23 and have not been elsewhere specified, they are correctly classifiable under Heading 90.29(1). We, accordingly, set aside the order of the Appellate Collector and allow the appeal.